

Before the
Federal Communications Commission
Washington, D.C. 20554



In the Matter of)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	
)	
A National Broadband Plan)	GN Docket No. 09-51
For Our Future)	

**INITIAL COMMENTS OF STATE E-RATE COORDINATORS ALLIANCE
IN RESPONSE TO
E-RATE BROADBAND NOTICE OF PROPOSED RULEMAKING (FCC 10-83)
ELIGIBLE SERVICES LIST FURTHER NOTICE OF PROPOSED RULEMAKING (FCC 09-105)
AND ON E-RATE DRAFT ELIGIBLE SERVICES LIST FOR FUNDING YEAR 2011 (DA 10-1045)**

I. Introduction

The State E-rate Coordinators' Alliance (SECA) submits these consolidated Initial Comments in response to the FCC's Notice of Proposed Rulemaking (rel. May 20, 2010 (FCC 10-83) ("E-rate Broadband NPRM")) seeking comment on various proposals for "[u]pgrading the E-rate program" as part of comprehensive Universal Service reform that is called for in the National Broadband Plan; the Eligible Services List Further Notice of Proposed Rulemaking (FCC 09-105) (rel. December 2, 2009) ("ESL FNPRM") and the FY 2011 Draft Eligible Services List (DA 10-1045)(rel. June 9, 2010)("FY 2011 Draft ESL").

These comments analyze in depth the potential benefits and detriments of the proposed changes described in the E-rate Broadband NPRM, ESL FNPRM and FY 2011 Draft ESL while making

every effort to improve and to avoid doing harm to this very successful program and to those who currently benefit from and have come to count upon its support. SECA's rich institutional knowledge about the program allows for its collective expertise to contribute insights and suggestions we have amassed during the 13 year history of the program.

SECA members are immersed in E-rate day in and day out and have been steeped in E-rate since the beginning. SECA accomplishes its work through the resources of its 87 individual members who provide statewide E-rate coordination activities in 47 states and 2 U.S. territories. Representatives of SECA typically have daily interactions with E-rate applicants to provide assistance concerning all aspects of the program, and offer face-to face E-rate training for applicants and service providers. As state E-rate coordinators, members serve as intermediaries between the applicant and service provider communities, the Administrator, and the Commission. SECA members typically provide more than 1300 hours of E-rate training workshops annually to E-rate applicants and service providers. In addition to the formal training hours, SECA members spend thousands of hours offering daily E-rate assistance to individual applicants through calls and e-mails.

Further, several members of SECA work for and apply for E-rate on behalf of large, statewide networks and consortia that further Congress' and the FCC's goals of providing universal access to modern telecommunications services to schools and libraries across the nation. Several SECA member states that submit statewide or very large consortia applications, the State Consortium Group (SCG), will submit separate E-rate Broadband NPRM comments that focus on issues specific to large consortia applicants.

In addition to their roles as State E-rate trainers and coordinators, most SECA members also provide the following services to the program: technology plan approval; applicant eligibility verification to the Administrator's Program Integrity Assurance (PIA) Division; verification to the

Administrator of applicable state laws confirming eligibility of certain applicant groups; contact of last resort to applicants by the Administrator; and verification point for free/reduced lunch numbers for applicants. Hence, SECA members are thoroughly familiar with E-rate regulations, policies and outreach at virtually all levels of the program, and are masters of knowledge of the operational procedures and policies used to administer the program.

II. Summary of Comments

SECA's Initial Comments propose the following recommendations:

A. SECA recommends the abolishment of the current E-rate mandated technology planning requirement for all funding requests – priority one and priority two. (Section III).

B. The form 470 should be abolished altogether or a simplified form 470 should be re-designed for the use and benefit of all applicants. (Section IV.A).

C. When codifying the general rule governing the competitive bidding requirement, specific examples of inappropriate or appropriate conduct should not be included. (Section IV. B).

D. Electronic filing and access of forms and all notifications and processes should be implemented. (Section V).

E. SECA supports the FCC's recommended simple average discount calculation for school districts. (Section VI.A).

F. The current method for the rural/urban designation should be updated and continued. (Section VI.B.)

G. The form 471 application should be substantially revised and streamlined to reflect the simplified average discount approach and to insure that applicants are not required to provide unnecessary information. (Section VI.C).

H. The funding of wireless services outside of school through the E-rate program must be carefully coordinated with other universal service support mechanisms. (Section VII.A.)

I. Dark fiber service should be eligible. (Section VII.B).

J. Eligibility of services to residential areas of schools should be approved. (Section VII.C).

K. Web hosting should be eliminated from the list of eligible services. (Section VII.D).

L. The framework for evaluating and determining eligibility of priority two services and equipment should adopt the OSI model. (Section VII.E).

M. Various components and services that are currently eligible for priority two funding should be made ineligible. (Section VII.F).

N. In order to meet the goals of providing more applicants with internal connections funding and ensuring a predictable amount of funding for applicants , SECA recommends a two-pronged approach: (1) Utilize a priority two funding “formula;” (2) Establish a process of funding “down” the discount levels until all applicants and discount levels are funded. (Section VIII.B).

O. Basic maintenance of internal connections should be eliminated from eligibility. (Section VIII.C).

P. Basic phone services should continue to be eligible. (Section VIII.D).

Q. Indexing the annual cap to inflation should be adopted. (Section IX).

R. Equipment disposal should be permitted under certain conditions but reporting the information to the Administrator should not be required. (Section X).

III. Technology Planning

The FCC proposes to eliminate E-rate technology plan requirements for priority one applicants that otherwise are subject to state and local technology planning requirements.¹ The FCC also seeks comment on whether a separate E-rate mandated technology plan requirement remains useful for larger telecommunications and Internet access service priority one funding requests, even for those applicants that are subject to other state or local requirements.² Comments are also sought on the proposed retention of technology planning requirements for priority two funding requests.³

SECA recommends the abolishment of the current E-rate mandated technology planning requirement for all funding requests – priority one and priority two -- because the requirement is redundant and unnecessary, and frequently becomes a means for denial of precious funding to applicants for ministerial infractions that are completely unrelated to waste, fraud or abuse.

When the E-rate program rules were first enacted pursuant to the May 8, 1997 First Report and Order in CC Docket No. 96-45, the FCC required a technology inventory/assessment and a plan for using the technologies that was subject to third party independent approval.⁴ In the beginning, it made sense to encourage applicants to go through this planning process because technology in education was still in its infancy. Years later in 2004, the FCC codified the specific requirements for technology plan contents, and prescribed that the Commission's technology plan requirements should be harmonized with the technology planning goals and requirements of the U.S. Department of Education and the U.S. Institute for Museum and Library Services as supplemented with the

¹ E-rate Broadband NPRM, ¶ 18.

² *Id.* at ¶ 19.

³ *Id.* at ¶ 20.

⁴ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, First Report and Order (May 7, 1997) at ¶¶ 572-574.

requirement that an analysis that indicates that the applicant is aware of and will be able to secure the financial resources it will need to achieve its technology aims, including technology training, software, and other elements outside the coverage of the Commission's support program.⁵ This later requirement has since also been incorporated into a form 471 certification on Block 6, Item 25 D.

Rather than considering the document for what it is supposed to be – a planning tool – applicants now are forced to insure that their technology plans are written in a very specific prescribed way to contain explicit references to the services and equipment that they seek to procure using E-rate funding. Even when plans are reviewed and approved by USAC-certified independent third party reviewers, applicants still risk denials should USAC personnel and/or auditors second guess the reviewers' conclusions that the plans contain sufficient information to satisfy the FCC's technology planning rules. Applicants worry that their good faith compliance with the technology planning rules, even if judged to be acceptable by the third party reviewers, could nonetheless result in denial and/or revocation of funding should USAC and/or auditors retroactively conclude that the plans were insufficient.

Many states already have technology planning and approval requirements in place for disbursement of federal funding overseen by the U.S. Department of Education and state level education agencies and departments. Moreover, many if not all E-rate beneficiaries are governed by boards of directors that require E-rate expenditures to be pre-approved. Further, the other certifications on form 470 and form 471 already require applicants to certify that they have the funds and resources to make effective use of the E-rate discounts. These other assurances already cover the same breadth of purpose and information that is required by technology plans. USAC and the FCC already have ample procedures in place to validate that applicants have bona fide resources

⁵ Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Fifth Report and Order (August 14, 2007) at ¶ 59.

in place for using the E-rate supported services and equipment without mandating a separate E-rate technology planning requirement.

SECA advocates that relief from the separate E-rate technology plan requirement be granted to *all* applicants for both priority one and two funding requests. One of the primary goals raised in the E-rate Broadband NPRM is to make priority two funding available to more, or potentially all, applicants. Should this goal be achieved, then any applicant seeking priority two funding would still have to comply with the technology plan requirement and would gain no benefit from any streamlining in this area.

SECA appreciates and respects that technology plans are an important exercise for school entities, whether they apply for E-rate or not. The issue at hand is the review and approval processes and the unintended results of that process. The Commission has successfully institutionalized the necessity and benefit of the planning process for all E-rate applicants. It is now time to let the applicants and their administrative authorities continue to plan for technology in a way that works best for them.

One common problem is related to small applicant technology plans. The guidance from USAC is that a plan's size and complexity should be proportionate to the applicant's size and goals. At issue here is that the current plan requirements and interpretation by USAC create a series of "gotchas" in the process. A small applicant does not have the same resources as a larger applicant, and often they apply for very little support from the fund. However, the forced exercise of plan creation beyond what they need to do the job creates an expensive and frustrating process for them that makes it almost not worth the effort of applying. Applicants that have simple but effective plans must focus on precise wording to protect themselves from a future COMAD. For example, if an applicant states that they want a 10 Mbps connection because that is the fastest available, but is later able to find a 1 Gbps connection for a similar price, the funding can later be denied because the

1 Gbps circuit is not specifically listed in their plan prior to filing the form 470. Thus, applicants are reluctant to state any connection speed at all due to the risk of COMAD. This is not what applicants should be focusing on when writing a plan.

Another problem is that the separate E-rate technology planning criteria often results in multiple review processes for school districts and educational service agencies at the state level. In many states, a technology plan is a required part of a school improvement plan, which has its own criteria. Then, there are Title IID/EETT technology plan requirements that have to be considered. Applicants attempt to create a single document that will encompass the criteria for all programs, but because there are often different staff responsible for reviewing the plan for the different programs, applicants are often forced to revise their plans an inordinate number of times. Conversely, reviewers for one program are then compelled to review the same plan multiple times even after approving it because it has been revised to meet criteria for another program and continued compliance must be ensured. Add to that the fact that E-rate coordination and technology plan approval are unfunded, this creates a crippling and expensive workload that is imposed on states. To date, much of this work has been subsidized by U.S. Department of Education technology grant administrative funds, but with those funds quickly diminishing, states will be required to absorb the cost of these services entirely by state-level budgets.

As times have changed, E-rate applicants have grown far more sophisticated in their planning and use of technology – with great thanks to E-rate. Thirteen years ago at the inception of E-rate, it was almost unheard of to think about giving e-mail access to students. Today, in contrast, student e-mail access is commonplace and so are applicants' staffed technology departments or personnel with their own budgets and goals. There are staffs dedicated to the planning and implementation of technology to facilitate the goals of the curriculum managers. This process is ongoing, ever-changing, driven by student and community needs, and no longer compels oversight by the Commission.

While it is understandable for the Commission to have an interest in how discounted technology is used, a separate E-rate technology plan requirement has long since outlived its purpose. With the advent and deployment of advanced wireless and fiber networks, it is now assumed that schools “know where they are going,” in terms of connectivity, professional development of teacher resources, and understanding of the budgetary process to plan for rollout. While the National Broadband Plan clearly spells out the direction of broadband connectivity--access for all Americans--the methodology a school employs to “get there,” is a local decision. E-rate technology planning is no longer required as a separate program requirement.

IV. Competitive Bidding Reforms

A. Exemption From Posting A form 470 For Priority One Services by A Subset Of Applicants Is Too Complex To Implement; Instead the form 470 Should Be Abolished Altogether Or A Simplified form 470 Should Be Re-Designed For the Use And Benefit of All Applicants.

Recognizing that some applicants could benefit greatly by not having to submit a form 470, the FCC proposes that certain applicants – those that are subject to public procurement requirements -- would be excused from posting a form 470 for priority one telecommunications and Internet access service. All other applicants not subject to public procurement rules would continue to be required to post a form 470 for priority one funding requests and all applicants would have to continue to post a form 470 for priority two procurements.⁶ SECA fully embraces the FCC’s underlying goal of this and many of its other proposals in the E-rate Broadband NPRM to simplify the E-rate program. SECA has advocated the elimination of the form 470 for *all* priority one funding requests in earlier filed comments, recognizing many applicants already are subject to

⁶ E-rate Broadband NPRM, ¶¶ 21-25.

state and local procurement requirements, in Comprehensive Review of Universal Service Fund Management, Administration and Oversight, WC Docket No. 05-195, et seq. (October 18, 2005) at pp. 19-22.

While the form 470 was designed to foster competitive bidding and assure that applicants procured the most cost-effective service and responsibly maximize the benefit of limited E-rate support dollars, in reality, the form 470 does not so much achieve this goal as it has evolved to become a repository of technical problems that prompts applicant denials of funding.

While we applaud the Commission's goals for the form 470 competitive bidding process, we believe that the posting of services has not produced the intended outcomes. Posting of form 470 applications alone do not create a competitive marketplace.

Very few, if any, entities receive viable bids as a result of their priority 1 form 470 postings. In fact, most entities do not receive bids from their incumbent providers, let alone from competitors, simply in response to posting of a form 470. Applicants must prepare and issue an RFP and/or affirmatively reach out to prospective service providers to encourage them to participate in the procurement. It is not uncommon for applicants to have to repeatedly contact service providers to request their submission of proposals. This is true across the board for all kinds of procurements across all categories of services – priority one and priority two funding alike.

What the form 470 has produced is a mechanism by which any vendor - from computer salesmen to stadium bleacher vendors - can access the phone, fax and/or e-mail address of 36,000+ entities. These solicitations usually have absolutely nothing to do with the services requested on the form 470 and the form's contact is left spending valuable time trying to get off e-mail lists, fax lists or the phone. And even vendors selling E-rate eligible services most often do not bother to read the specific services requested on the form 470s and instead initiate cold calls without regard for the specific contents of the form 470 to all applicants who post for services in a certain category.

The form 470 and its associated deadlines, category selections, multi-year contract and contract extension requirements annually are the basis for a multitude of administrative denials by the Administrator. Such denials are not happening to applicants that are trying to commit fraud against the program, and these denials have nothing to do with thwarting waste, fraud or abuse. Rather these denials are based on inadvertent errors committed by deserving, eligible schools and libraries. Even with the breadth of changes implemented under the Bishop Perry Decision, there were very few changes included in Bishop Perry to correct denial-related form 470 errors. By removing the cause or basis for these denials, deserving applicants would receive the discounts which the Telecommunications Act of 1996 made available to them, and an enormous administrative hurdle would be eliminated, which would reduce significantly the number of appeals that are filed annually with the SLD and FCC.

SECA carefully considered the Commission's proposal to only eliminate the form 470 priority one requirement for the subset of entities that are subject to public procurement requirements, and concluded that this proposal, while attractive on its face, would pose so many implementation issues that it would add to the complexity and not simplify the application process. The proposal would streamline the application process only for a certain sector of applicants and for certain funding requests, but a large segment of the applicant community -- private schools, libraries and all applicants in the several states that do not have public procurement laws -- would not be granted relief of this requirement and the associated denial causes. Because the relief would be available to some but not all classes of applicants, this partial relief would cause more confusion and misunderstanding rather than streamline the program.

Upon detailed analysis of the FCC's specific proposal that only those applicants that are subject to public procurement requirements would no longer be required to post a form 470 and

wait 28 days before signing a contract with their selected service provider,⁷ SECA concluded that numerous entities would be excluded and would receive no streamlining benefit. A resulting patchwork of requirements would then have to be woven together from state procurement laws, publicized to applicants and then left to the Administrator to devise yet another complex administrative procedure to enforce the form 470 requirement for those entities that would still be subject to it.

SECA has determined that public schools in at least three states would be completely excluded and would still have to post form 470s as these states have no public procurement laws related to schools. Nonpublic schools in most states would be completely excluded because again, no state procurement requirements govern them. Similarly, most libraries also are not covered by state bidding laws. Even in states that have public procurement laws, such requirements often exempt services such as telecommunications and Internet access and equipment purchased under a certain dollar threshold. Consequently, only some entities for some purchases would be excused from the form 470 posting requirement. Such a result would completely defeat the underlying streamlining purpose as applicants would face a daunting task of ascertaining whether a procurement was covered by state or local procurement requirements or whether a form 470 would have to be posted.

Not only is the selective elimination of the form 470 requirement not fair to all applicants, it will create yet another complexity for program applicants as they attempt to determine if they are exempt from the form 470 requirement or not. And if they determine wrongly, they will be subject to denial.

Similar concerns abound if the form 470 is eliminated for priority one but not for priority two funding requests. A bifurcated system will inevitably cause further confusion among applicants

⁷ E-rate Broadband NPRM, ¶ 21.

that may not be altogether familiar with the regulatory classifications of services. For instance, an applicant may wish to contract for a high speed wide area network leased telecommunications service with leased on-premise priority one equipment. Proposals submitted in response to the procurement may instead suggest that the most cost effective option is for the applicant to purchase the edge equipment for the network, which according to E-rate rules, is priority two equipment. But if the applicant failed to post a form 470 in anticipation of this possibility, they would find themselves in the situation where accepting the most cost effective bid may disqualify them from being to apply for E-rate on the costs of the priority two edge equipment simply because they had not posted a form 470 beforehand. Anticipating all of these types of scenarios is impossible to do beforehand, which will lead to one of two equally unappealing outcomes: applicants will be forced to post a form 470 for all procurements “just in case” leading to no actual simplification or streamlining for them; or they may risk denials of funding based on not fully understanding the implications of the new rules—such as illustrated in the wide area network service example.

The Commission’s observation that “[t]he complexity of the FCC form 470 and its associated deadlines, category selections, multi-year contract and contract extension requirements, in and of themselves, have been the basis for a multitude of funding request denials by USAC[,]”⁸ is equally true for both priority one and priority two funding requests.

The Commission’s proposed rationale for retaining the form 470 for priority one funding requests where there is no governing state or independently established local procurement requirement or for priority two funding requests fails to take into account that E-rate procurements are just one of a multitude of procurements that each E-rate beneficiary undertakes as part of their governing boards’ responsibilities. There is no special need to elevate E-rate purchases to a higher

⁸ E-rate Broadband NPRM, ¶ 22.

or different procurement standard than what is applied to the myriad of other procurements each organization undertakes. Because the form 470 does not stimulate the submission of competitive bidding proposals, the form itself does little to guard against waste, fraud and abuse. Doing away with the form for all procurements, and relying on the local organizations' procurement processes and policies will not hinder the detection of potential waste, fraud or abuse. Applicants will still need to demonstrate, if asked by the Administrator, that their competitive bidding process was fair and open and the most cost-effective solution was selected.

SECA therefore recommends as its primary position that the form 470 should be eliminated for all procurements. Applicants should be required to comply with state or independently established local procurement requirements, and will need to certify and prove (if asked for supporting documentation) that the procurement was conducted in a fair and open manner and that the most cost effective bidder was selected.

As its alternative position, should the FCC conclude that it does not wish to abolish the form 470 altogether, SECA supports the retention of the form 470 requirement for all services while recommending substantial streamlining changes to the form 470 content, required information collection, and certifications. Changes to the form 470 are intended to achieve the desired simplification of the process for applicants while retaining a useful tool for service providers and those who are not fortunate enough to have been included in a public procurement statute.

The basic framework of the original form 470, which has remained intact throughout the 13 year history of the program, was developed when the program requirements had first been enacted and prior to any experience by applicants, service providers and the Administrator in using the form. The current form has several meaningless items and collects unnecessary information that is not used in any way to protect against waste, fraud and abuse, and simply creates confusion,

grounds for denials and Commitment Adjustments (COMADs). SECA urges the FCC to simplify and redesign the form 470 as follows.

1. Eliminate Funding Year Designation - Block 1, Item 2: When a school posts a form 470, it may be for services that will begin in the next funding year. But it also may be for services that may begin before July 1 of the next year, as well as for services that begin after the funding year has ended (such as large regional or statewide procurements). The FY designation was implemented prior to the concept of the evergreen form 470, and is a misnomer that forces applicants to select the funding year designated on the most currently available version of the online form, which may or may not be an accurate statement. In reality, there should be no specific funding year form and applicants should be able to use the most currently available form, regardless of when it is posted throughout the year. For applicants of MTM services, SECA proposes that a form 470 posted after the application window closes will satisfy the posting requirement for the next funding year.

2. Eliminate Block 2, Item 7: The original intent of this section was to provide the prospective bidder with an indication of the length of time the applicant was interested in receiving service. It should not matter if the service arrangement that the applicant may wish to consider is tariff, month-to-month, single or multiyear contract with or without voluntary extensions. In all circumstances, the applicant is bound by E-rate rules to accept the most cost effective proposal. For contract service, the contract document must state whether there are options to voluntarily extend the contract after the initial contract term expires. A check in a box on a form or lack thereof should not preclude an applicant from choosing the most cost effective service. In other words, if an applicant forgets to check the contract service box on Item 7, the applicant should still be able to enter into a contract for service. If an applicant forgets to check the box that states the applicant is interested in entering into a multi-year contract with voluntary extensions, the applicant should not be precluded from entering into a contract with voluntary extensions. In many instances the

applicant checks all boxes in this section just to ensure they have all the bases covered. In summary, the prospective bidder has a responsibility in the procurement process to reach out to the applicant to determine the applicants' needs and to submit a responsive proposal.

3. Changes to "Description of Services" in Block 2:

(a) Eliminate categories of service in Items 8, 9, 10 and 11: Posting requests in incorrect service categories is a major concern of applicants and is a consistent gotcha for applicants. It is commonplace for applicants to encounter problems with their funding requests for either telecommunications or Internet access service, when they post in one category but not the other. A common example of this problem relates to portable wireless Internet access provided by cellular companies. If an applicant posts in the telecommunications category but fails to also post in the Internet category, they risk denials of funding for portable wireless Internet access – even though the very same company that is a telecommunications common carrier (and that would have reviewed the telecommunications section of the form 470 and known the applicant wanted to receive support for portable wireless Internet access service) provides both services. Similarly, applicants and PIA reviewers alike still demonstrate confusion over whether a telecommunications transmission circuit that is used to access the Internet should be posted in the telecommunications category only OR both the telecommunications and Internet access categories. This confusion may lead to denials of funding for a ministerial error.

With the changes in technology, and unsettled legal distinction between telecommunications and Internet access services, which are pending clarification in a separate proceeding, telecommunications and Internet access can be provided using many varieties of technology. The form 470 categories have not kept up with this concept with respect to priority one services. This is most evident when requesting portable wireless data services, broadband services, and the proposed eligibility of leased dark fiber.

Further, SECA believes it is sufficient to have a check box to indicate whether the form 470 is for priority one, priority two or both priorities of services, and dispense with the listing of the four specific categories. We understand that the form 471 may continue to require the delineation of Telecommunications Services, Internet Access and Internal Connections for regulatory purposes, but without the service categories on the form 470, many fewer denials will be issued. By removing these categories, applicants will have a much easier time completing their form 470 applications, thereby simplifying the program. Given the form 470 download tool that is available for identifying prospective bidding opportunities, the elimination of the form 470 categories of service should not have an adverse effect on service providers.

(b) Streamline the Description of Services sections in Items 8, 9, 10 and 11 to be collapsed into one section that requires the listing of services or functions and quantity or capacity and information about issuance and online access to requests for proposals

4. Eliminate Block 3, Item 14 “Basic telephone service only”: This item is redundant to the certification in Block 6, Item 20 and serves as a continuing source of confusion to applicants:

- I certify that all of the individual schools, libraries, and library consortia receiving services under this application are covered by technology plans that are written, that cover all 12 months of the funding year, and that have been or will be approved by a state or other authorized body, and an SLD-certified technology plan approver, prior to the commencement of service. The plans were written at the following level(s):

a individual technology plans for using the services requested in the application; and/or

b higher-level technology plans for using the services requested in the application; or

c *no technology plan needed; application requests basic local, cellular, PCS, and/or long distance telephone service and/or voice mail only.*

(emphasis added).

5. Eliminate Block 3, Item 15 Ineligible Services or Facilities Necessary to Make Effective Use of Eligible Services: Subsections a-e seek information that is not relevant at the time of posting a form 470, prior to the applicant making a decision whether to procure a particular service. At the time of the form 470, applicants are seeking pricing for projects that they may or may not implement. Applicants do not know how much money or resources they will need until they receive proposals for services and can quantify the associated costs.

Subsection f appears to have been intended to provide prospective bidders with additional information on the scope of the applicant's project. Thirteen years of experience in the E-rate program show this section of the form 470 only invites unwelcome and unwanted solicitation for non-E-rate eligible services. As mentioned in the discussion of Item 7, the prospective bidder has an obligation to reach out to the applicant to determine the applicant's needs.

6. Items 16 and 18 "Eligible and Ineligible Entities": The area code information required in Items 16c and 18 is not used to evaluate compliance with any E-rate program rule; the information is not useful to service providers and is *extremely burdensome* for applicants to provide. SECA is aware of challenges and questions applicants have received from PIA concerning the information contained in these sections even though the sections are entirely irrelevant. These items should be omitted from form 470. The information collected in Items 16 c is unnecessary.

7. Revisions to Block 6 Certifications:

(a) Eliminate Item 20, technology plan certification, consistent with SECA's recommendation to abolish the separate E-rate technology planning requirement.

(b) Remove reference to technology plan goals in Item 21.

(c) Revise Item 24 to be more accurate: I certify that I am authorized to competitively bid ~~order~~ the services included in this application. ~~telecommunications and other supported services for the eligible entity(is). I certify that I am authorized to submit this request on~~

~~behalf of the eligible entity(is) listed on this application, that~~ I have examined this request, and to the best of my knowledge, information, and belief, all statements of fact contained herein are true.

To summarize, SECA recommends that the form 470 be drastically revised to *only* include three sections:

- 1) Applicant Contact Information (including technical contact information)
- 2) Description of Services (without categories of service)
- 3) Certifications

These requested changes maintain the competitive bidding processes while eliminating unnecessary confusion. The changes remove “gotcha” items from the form, which will alleviate applicants’ stress and anxiety while preserving the essential purpose of this form to provide prospective bidders with adequate information about bidding opportunities.

B. When Codifying The General Rule Governing The Competitive Bidding Requirement, Specific Examples of Inappropriate or Appropriate Conduct Should Not Be Included.

The Commission proposes to amend 54.510 of the rules to codify the requirement that an applicant must still comply with the Commission’s rule requiring the careful consideration of all bids submitted; the selection of the most cost-effective bid for services or equipment, with price as the primary factor considered; and the selection of the service that is the most cost-effective means of meeting educational needs and technology plan goals, in addition to the adherence to any existing state and local procurement laws. SECA supports the codification of these rules and believes that safeguards will create a level playing field and a high level of procurement expectations for all applicants. SECA believes that the Administrator should be directed to avoid onerous application of competitive bidding standards and should rely on applicant self-certifications that competitive bidding principles have been honored. Beneficiary audits provide adequate opportunity for the Administrator to ensure compliance with the principles.

SECA, however, strongly opposes the inclusion of the examples of specific competitive bidding *conduct* that the Commission proposed to include in the codified rule. SECA members are specifically concerned about a number of the proposed rules (for example, the outright ban of applicant service on a service provider board would unnecessarily upset arrangements between Educational Service Agencies who operate as ISPs and the districts they serve that do not pose a conflict of interest). If the FCC codifies a set of rules, there will be unintended consequences in administration and it will be difficult to address any problems in a timely way. Most states have codes of ethics covering these matters and there is extensive case law addressing these issues. Notably, the Federal government has prosecuted successfully and repeatedly persons from both the applicant and service provider communities for violating the open and fair competitive bidding process requirement notwithstanding the absence of specific examples codified in the FCC rules.

V. Electronic Filing of Forms

As part of the streamlining initiatives, the FCC recommends that all E-rate forms should be available for online submission, and applicants should be able to upload requested information electronically. Applicants should also be able to save, retrieve, and edit previously filed applications and use these forms as the basis for future funding requests, thereby improving the efficiency of submission and processing of applications.⁹ The FCC also proposes that all applicants must be required to file electronically, and asks whether these initiatives will save USAC's administrative costs.¹⁰

⁹ E-rate Broadband NPRM, ¶ 15.

¹⁰ E-rate Broadband NPRM, ¶ 16.

SECA strongly supports added online functionality to facilitate online application submission, including not only forms, but all communications with USAC such as SPIN changes, service substitutions, invoice deadline extension requests, service delivery deadline extensions, returning funds to USAC, contract expiration date changes, etc. At present, while applicants may file the major forms online, many important procedures such as SPIN changes and invoice and service delivery deadline extension requests, as well as the form 500 are required to be submitted through letters and paper forms that must be filled out by hand. By just making the form 500 an online form, it will greatly simplify applicants' ability to return unused funds to USAC and provide much needed rollover funding to enable timelier funding for the needed growth in priority one funding as well as the enhancing distribution of priority two funds.

All of these procedures should be available from a centralized portal that contains all relevant information for each FRN. Applicants should be able to retrieve their current and prior years' information and use this information as the starting point for new forms submission rather than having to start anew each time they must submit a new form or complete a request for change.

Such online functionality certainly will conserve on data entry and problem resolution resources that USAC currently must utilize as well as customer service bureau inquiries. Once applicants can check the status of their forms and requests online, using the centralized portal, they will be able to track these forms themselves rather than having to place calls to CSB to obtain this information. If all requested PIA information were able to be uploaded and available for review, duplicative requests for information that the applicant may have already submitted but had not reached the specific PIA reviewer would be eliminated and processing time of form 471 applications could be reduced.

Although online forms submission is likely to be embraced by a vast majority of applicants, there are some applicants that may still need to submit paper forms. These applicants may not

have a reliable Internet access connection, may find themselves in emergency situations or may need to complete complex forms over a long time period which does not lend itself to online submissions (because of time outs and other operational challenges). Consequently, SECA has concerns about the FCC's proposal to *mandate* that all applicants submit their forms online and instead supports giving applicants a choice to file paper forms in situations where connectivity, administrative or timing emergencies limit the ability to file electronically.

SECA is also concerned about the unnecessary duplication and system complexity in the present process of online filing of the forms 470, 471 and 486 where applicants have the ability to choose between the "Interview" and the "Create" formats for preparing online forms. While USAC reports that a minority of applicants utilize the Interview online format, experience with SECA constituents indicates that the Interview format produces considerable applicant confusion and errors in completing forms. In addition, the majority of system errors seem to occur with the Interview application format. Most importantly, the Interview format would be duplicative and inconsistent with the portal approach to applicant information retrieval and form preparation. SECA recommends that, to simplify the program and conserve resources, the Interview online filing format should be removed from the online application process and the Create format remain as a basis for the development of a centralized electronic portal for all program forms.

Along with the portal concept and online access to all forms and processes, SECA also encourages the FCC to take a comprehensive look at the purpose of the various forms and condense forms or functions wherever possible. For example, the form 486 is used to turn on funding, certify CIPA compliance, and list the certified technology plan approver. In cases where applicants know that services will begin on July 1 and are CIPA compliant, applicants should be permitted to certify to these conditions on Block 5 of the form 471. This would eliminate an entire hurdle and provide yet another means to streamlining the program. Additionally, an item could be included on a BEAR that asks the applicant if this is the absolute, final invoice for this funding request, thereby releasing

all remaining funds back to the fund. This function would eliminate the need to file a form 500 for many applicants, and would return millions of dollars in unspent funds annually where applicants would not typically think to file a form 500 after a BEAR has been filed for the year.

VI. Discount Matrix Streamlining Recommendations

A. SECA Supports The FCC's Recommended Simple Average Discount Calculation For School Districts.

SECA agrees with the proposed revision to the discount rules that will allow applicants to calculate discounts on supported services by using the average discount rate for the entire school district within which they are located rather than the weighted product average for each school building.¹¹ Though there may be specific instances where this change results in a lower discount for certain entities, by and large the impact of this specific proposal has been determined to be negligible.

The resulting discount then being a single entry in Block 4 of FCC form 471 would greatly simplify and streamline the application process for applicants as well as the review process for both applicants and USAC. When the First Report and Order was developed, the FCC opted for a level of granularity for discount calculations that required school-by-school information. If the Commission decides to move to a district-level discount calculation (based on total enrollment and total NSLP eligible students), it is necessary to review the original granularity decision and change the requirement to collect information at the administrative authority level. School districts (as one example of administrative authorities) deal with closing and opening schools and moving students and property among schools on a frequent basis and are not required to report this information to

¹¹ E-rate Broadband NPRM, ¶¶ 34-36.

any other agency or organization that provides funding. They likewise should not be required to report these changes with respect to E-rate.

Especially in recent years, the focus on individual schools has led to a significant increase in program complexity and administrative burden on applicants, the Administrator, and the FCC. The waiver order with respect to schools in New Orleans (FCC 10-27, Rel. February 2, 2010) is a dramatic example. Schools in the New Orleans area were closed after Hurricane Katrina in 2005 and reopened gradually in the months and years that followed. Schools moved from building to building over time as well. The Commission determined that funds could not be committed to the Orleans Parish School Board or the Recovery School District until the schools on the Block 4 worksheets that had been submitted from 2005 and forward were corrected to reflect all these changes; and, only a waiver of the rules could allow those corrections. As a result, the two school districts spent years developing the tables that Commission staff determined were necessary and Commission staff spent months developing the waiver order. In the meantime, the districts were denied funding for FYs 2007 through 2009 until the waiver order was released and the Administrator could review the applications with the order as guidance. Funding is still largely being withheld pending completion of those reviews. If the Commission focused on the administrative authority in making funding commitments, that entire lengthy, arduous process would not have been necessary. There was no question that the funds would be used to benefit schools under the districts' authority, and if warranted, a post-commitment review could ensure that equipment was located at sites benefitting the schools.

SECA supports the full streamlining of the Block 4 where no individual school building names are listed, but instead just the district (or entity) name, the total number of students enrolled, and the total number of students eligible for NSLP. However, should the FCC believe this data is needed for some reason, Block 4 should be modified to list buildings believed to be receiving services on July 1, with the clear and direct written guidance given to the Administrator that those

buildings may change throughout the funding year and that the applicant cannot be penalized whatsoever should a building be added or removed from receiving eligible services. With the modification to the way applicants calculate discounts, there is no way for an applicant to manipulate the manner in which it applies for discounts based on subsets of high discount schools, and therefore an applicant cannot receive more funding than that to which it is entitled.

Applying one discount to all eligible entities within the geographical area of a school district would greatly simplify application review and lead to more timely funding commitments from USAC. For priority two applicants, relying on the simple average discount of the district would effectively leave control of equipment and wiring planning/expenditures with the school district, lending greater support to the more comprehensive planning, budgeting, and procurement processes at the shared/district level.

SECA understands that school level data may sometimes be required to validate the district-level discount, but, in general, urges the Commission to change its focus from individual schools to the administrative authorities for those schools. In those rare instances when school-level data may be required, the Administrator should establish the capability for uploading the data to USAC by the states' departments of education or the state entity currently responsible for collecting and validating this data—if this information is available in that manner. Separating data reporting from the application process itself will provide significant relief to those, primarily smaller or rural applicants, most in need of process streamlining. Applying one discount to all eligible entities within the geographical area of a school district would greatly simplify application review and lead to more timely funding commitments from USAC.

B. The Current Method For The Rural/Urban Designation Should Be Updated and Continued.

In order to “ensure funds are targeted appropriately,” but not intending to reduce discounts to certain rural schools, the FCC has proposed to modify the manner in which school buildings are determined to be located in a rural or urban area. The FCC recommends using NCES locale codes of school buildings for this classification.¹² Unfortunately the NCES locale code method is based on a database that fails to include all school districts and buildings, and creates major shifts and disruptions to existing rural designations.

SECA believes the current method of determining Urban/Rural classification should continue to rely on the definition of rural area as an area that is not located in a county within a Metropolitan Statistical Area (MSA) as defined by the Office of Management and Budget (OMB), or if it is specifically identified as rural in the Goldsmith Modification to Census data. SECA recommends that the MSA data be updated to reflect the 2000 Census data and then 2010 Census data as soon as it becomes available from the Department of Commerce.

Adoption of the FCC’s proposed change to instead rely on NCES locale codes of individual school buildings does not consider the simplified single discount calculation for districts. Adopting the single discount calculation essentially makes it unnecessary to examine and collect the NCES data at the individual school level. Instead of requiring each building’s rural/urban status, the rural or urban status of *a district* will be required.

Even if the rural/urban designation would rely on the NCES locale code method at the school district level, the lag in updates to the database would pose significant administrative problems for newly established school districts. NCES code assignment and data lag significantly (2 or more years) behind new school construction and opening, or new district creation/designation.

¹² E-rate Broadband NPRM, ¶¶ 37-40.

For example, in one of SECA's member states a new school district has been in operation since 2008, yet no NCES data is available for this new district. In another state, a district formed in 2009 has yet to be entered into the NCES locale database. In yet a third state, which has undergone several district merger consolidations in the past two years, four newly formed districts are still not yet listed. The NCES locale code database also does not appear to include all private schools which would create confusion for these entities to try to ascertain their rural/urban status.

There are numerous disruptions that will occur to the detriment of districts that are correctly classified as rural at the present time, should the definition be changed to the NCES locale code method. In South Dakota, for example, four districts currently – and properly -- classified as rural would become urban. Seven other districts that are currently classified as urban would change to rural. While changing the seven districts to a rural status make sense, it does not make sense to now penalize the four districts that are currently classified as rural. Such disruptions would not serve to meet the FCC's goal of not taking away the rural discount where it is appropriately applied. Various other states experience similar discrepancies and changes using the NCES locale code method. Coupled with the incompleteness of the NCES locale code data, SECA is compelled to recommend continued use of the existing method using updated Census data.

SECA disagrees with the position that adopting the NCES Urban/Rural classification methodology is less burdensome to school and library applicants. We believe that this methodology would prove considerably more burdensome for both applicants and the Administrator in light of the simplified single district discount calculations proposed in this E-rate Broadband NPRM and supported by SECA. While the MSA/Goldsmith modification approach currently being used is not perfect, applicants have grown accustomed to it and changing it will not create any efficiency or benefit to the program.

C. The Form 471 Application Should Be Substantially Revised And Streamlined To Reflect The Simplified Average Discount Approach And To Insure That Applicants Are Not Required To Provide Unnecessary Information.

The simplified average discount calculation methodology provides the impetus for SECA to scrutinize the existing form 471 application and to make numerous recommendations to eliminate the collection of unnecessary information that the Administrator will no longer need. The following changes are recommended:

1. Block 1, Billed Entity Information: Add a designation for type of application (Priority One or Priority Two). Applicants will be required to submit either a priority one or priority two application but will be precluded from submitting a mixed priority one and two application. The Administrator currently “strongly recommends” separating applications due to application processing limitations. Applicants that unwittingly file priority one and priority two services on a single application face long funding delays which can be avoided with this modification.

2. Block 2 and 3, Impact of Services Ordered on Schools or Libraries: According to form 471 instructions, Blocks 2 and 3 “...ask for data to help the SLD document the potential impact of the universal service program for schools and libraries across the country, and compare that impact from year to year. These blocks request data pertinent to all applications filed by the Billed Entity for this funding year.”¹³

SECA believes the information that applicants report in Block 2 and 3 has not been useful to the Commission or USAC for determination the overall success of the E-rate program. For example, in Block 2, the information requires the number of classrooms with telephone service, but does not explain whether a teacher with a school-assigned cell phone in a classroom counts as a classroom

¹³ FCC Form 471 Instructions, November 2004 Page 12.

with telephone service. The number of buildings, but not number of students, are used as the measure of broadband services, but the minimum definition of broadband service is not provided. According to the manner in which the current form could be interpreted, any service above 56 kbps could be construed as broadband. Moreover, the number of buildings is not a consistent measure – it should be the number of classrooms and a more disaggregated breakdown of this information should be required to be provided in order to be meaningful. A further complicating factor is that the data provided in Block 2 and 3 is often duplicated with school, school district and consortium applications making it impossible to show the impact of E-rate funding. Because the information collection is fraught with so many problems that it is useless, SECA proposes to eliminate Block 2 and 3.

3. Block 4, Discount Calculation Worksheets:

With proposed changes in discount calculations the Block 4 can be greatly simplified. For school, library, school district, and schools with multiple locations, the Block 4 will be a single line that reports the number of enrolled students, the number of NSLP-eligible students and the rural/urban status for the entity. Consortium applications would list the Administrative Authority Billed Entity Number for each member and the aggregate number of total and NSLP-eligible students associated with that member. The consortium discount would be the simple average of all members.

The Administrator would no longer need to collect information about the various individual school buildings in Block 4 since this information is no longer relevant for computing the discount calculation. The purpose of Block 4 was originally designed to calculate the E-rate discount, but the purpose of this section was modified over the years to service two purposes - calculate discounts and identify all recipients of services. In doing so, Block 4 has become a land mine for applicants

that may inadvertently omit an entity that is part of their district and that receives some of the E-rate services.

One area where this problem has been evident is in the case of non-instructional entities. When the FCC expanded the definition of educational purposes to include services provided to administrative buildings without classrooms in April of 2003,¹⁴ the Administrator implemented a new procedure that required all non-instructional facility buildings to be assigned an entity number and listed on Block 4, even though the inclusion or exclusion of these entities had absolutely no bearing on the shared discount calculation. Since these entities have zero students and zero NSLP eligible students (since by definition they are buildings without classrooms), the weighted average calculation was not at all affected by these entities. Nonetheless, if a non-instructional facility is inadvertently omitted from Block 4, this ministerial oversight has become grounds for invoice denials and commitment adjustments which rescind funding for any entity that was not listed on Block 4.

Likewise, the complex administrative procedures that have ensued as a result of closing and opening of new school buildings sometime after a form 471 application has been submitted is like being stuck on an M. C. Escher staircase. If a new building opens after the form 471 application has been funded, and shares in the use of E-rate funded services, there is no procedure for notifying the Administrator and adding the building to Block 4 so as to permit the building to be included in the services that are supported by E-rate. When an invoice for the FRN is submitted, the Administrator will review the locations listed on the bill and compare them to the locations listed on Block 4. If there is a mismatch, the applicant is not entitled to E-rate support associated with that building.

¹⁴Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking (rel. April 30, 2003), ¶17.

If a building listed on Block 4 is closed, the Administrator presumes that the closed building will automatically result in a reduction in the costs of E-rate supported services, and sends a notification to the applicant requiring the applicant to cost allocate funding based on that building. If the cost of the service will not be reduced due to the building closure, the applicant is forced to obtain documentation from the service provider to somehow show that there is no reduction in costs – even though frequently service providers will really have no idea of how the applicant is using the services among various school buildings. For example, if a district is approved for 21mb of commodity Internet access for its 12 school buildings, and one of those buildings is closed during the school year, the district's internet costs are not reduced. Accordingly, the internet service provider will have no knowledge of any specific school buildings receiving their service, as they only know the demarcation for the district likely at the address of the district's network operations center.

All of these needless hoops can now be eradicated through implementation of SECA's suggestions for a refocus from buildings to administrative authorities (discussed above) and for revising Block 4. This recommendation will reduce applicants' burdens and the Administrator's application processing burden.

4. Block 5 Revisions: Most changes will simply follow adopted regulations. For our comments we will deal with only a few items: Eliminate Item 20b, Contract Expiration Date¹⁵ and modify Item 22, Entity/Entities receiving this Service to a single line listing a Block 4

¹⁵ The Contract expiration date is currently collected in order to ascertain when a new form 470 must be posted. Per SECA's recommendation to eliminate the form 470, this information no longer would be required to be provided.

worksheet number. Most applicants will have a single Block 4, which will automatically populate, but some consortia will have several Block 4 worksheets from which to choose.¹⁶

VII. Modifications to Eligible Services

A. The Funding of Wireless Services Outside Of School Through The E-rate Program Must Be Carefully Coordinated With Other Universal Service Support Mechanisms.

The FCC proposes to adopt the National Broadband Plan recommendation to provide full E-rate support for Wireless Internet access service used with portable learning devices used off school premises.¹⁷

The National Broadband Plan and the National Educational Technology Plan extols the virtues of anytime, anywhere learning. From Henrico to San Diego, data has been widely published and pored over. In states like North Carolina, South Dakota, Michigan and Maine, handhelds, laptops, and even smart phones have excited students and professional learning communities have engaged sagacious educators. Foreign leaders have committed entire countries to the “One Laptop Per Child” initiative. In considering whether E-rate support should be expanded to wireless Internet access services off school premises, the FCC cautiously asks about the potential financial impact of such a proposal on available E-rate funding.¹⁸ Recognizing the need to carefully manage limited E-rate sources, the FCC explicitly asks if commenters believe that this rule change would

¹⁶ In Section VIII, below, in which SECA discusses its priority two reform recommendations, a mock up of the revised Block 4 of the Form 471 will be set forth. The mock up incorporates the recommendations in this section as well as Section VIII below.

¹⁷ E-rate Broadband NPRM, ¶¶ 44-51.

¹⁸ E-rate Broadband NPRM, ¶ 51.

limit the ability of eligible users to obtain other services, and whether this service should be made available on a trial basis.¹⁹

SECA applauds the FCC for putting forth this opportunity to create meaningful change. At a time when many countries are raising the number of days students attend school to well over 200 per year, and cash-strapped American school districts are considering 4-day weeks, it is more important than ever for American students to have access to a “world-class” education. The effort to equip American students with the best learning tools and American educators with the best professional development will require a carefully planned, pragmatic approach, especially where E-rate is concerned.

Before adopting any permanent addition to the Eligible Services List to include off-premise wireless Internet access, the FCC should first carefully consider whether the E-rate program is the appropriate universal service support mechanism to fund this service. Notably, broadband access pilot programs are being discussed in connection with the low income support mechanism, which could conceivably create some overlap with the E-rate program funding.²⁰ At the very least, careful consideration must be undertaken to insure that the rules for providing support for broadband access off-school premises is coordinated with the low income program.

Following the example of the low income support program, SECA recommends that the FCC convene further discussions outside of this comment cycle to explore the development of a possible pilot program for Internet access off-school premises.

To facilitate the discussion and determine the scope of the initial pilots:

¹⁹ *Id.*

²⁰ Public Notice, “Wireline Competition Bureau Announces June 23, 2010 Roundtable Discussion to Explore Broadband Pilot Programs for Low-Income Consumers,” (DA 10-1041)(rel. June 8, 2010).

- The FCC should hold a workshop on the pilot program (similar to the Low Cost fund pilot project workshop held on June 23, 2010) to develop program details; parents, students, and school administrators should participate in the workshop along with representatives from school districts that already operate home use programs, and, of course, FCC officials and USAC staff.
- The FCC should issue a NOI to determine how many schools are currently deploying wireless Internet access “off premises” and how many schools are preparing to deploy within the next two years to gauge initial demand
- The FCC should issue a NOI to solicit participation in the pilot with the objective of conducting a reasonable number of pilot programs that reach across different geographical areas and different student populations
- Participating states and territories would conduct a competitive process to choose the school district which will conduct the pilot project for that jurisdiction
- Set forth the requirement that all discounted access must be filtered for students
- Realize that “educational use” is never 100% and bring all schools from an unrealistic state of non-compliance into a more reasonable state of compliance
- Require that schools provide parents with accountability tools such as electronic access to filtering logs and Internet history
- Require that schools provide sustained professional development for teachers.

SECA members look forward to further participating and contributing to the discussion of this important issue.

B. Dark Fiber Service Should Be Eligible.

To increase flexibility in selecting cost effective broadband solutions, the FCC is seeking comment “on permitting participants to receive support for the lease of fiber, even if unlit, from third parties that are not telecommunications carriers...”²¹ The FCC also proposes to make leased dark fiber from any source eligible for funding as a priority one service.²² Furthermore, the FCC proposes to add leased dark fiber to the ESL again - as it was prior to 2004 – “under such an approach applicants, would, for instance be able to lease dark fiber that may be owned by state, regional, or local governmental entities, when that is the most cost effective solution to their connectivity needs.”²³

SECA believes existing dark fiber should be leveraged to provide a cost effective, rapid deployment, high bandwidth solution for schools and libraries. SECA enthusiastically supports and recommends that both leased dark (unlit) and lit fiber should be eligible for E-rate, without cost allocation requirements, from *any* entity (i.e., not just common carriers) such as:

- Research and Education Networks
- State, Regional or Local Governmental entities
- Utility Companies (railways, power companies, cable companies, etc.)
- Non-profits and for-profits

Although the FCC specifically listed state, regional and local government entities as examples of entities that could provide dark fiber, SECA requests the FCC to clarify that these entities are merely examples and that other entities, such as power companies, cable companies -- indeed any provider -- will be considered an eligible service provider of dark or lit fiber service.

²¹ E-rate Broadband NPRM, ¶ 52.

²² *Id.* at ¶ 53.

²³ *Id.* at ¶ 54.

Schools and libraries need more flexibility in fiber acquisition in order to reach un-served and underserved areas in the most cost effective way, as evidenced in the comments cited in the National Broadband Plan.²⁴ SECA believes increased flexibility of access to fiber, both lit and unlit, as eligible priority one services will reduce the overall cost of broadband deployment to both applicants and the fund. Applicant-provided equipment to light the fiber should continue to be eligible for E-rate support under priority two. With respect to the “immediate” lighting of the fiber, the service start date should not begin until the fiber is lit.

In order to ensure new fiber construction promotes broadband deployment and adoption, the FCC should require that access to any excess fiber capacity not be restricted in any way. This should help alleviate any potential concerns or misgivings of telecommunications providers (common carriers) since they too could and would benefit from the fiber construction allowing these service providers to compete on a level playing field while potentially reducing if not avoiding the high capital costs of fiber construction. Open access to this capacity should spur innovation in the industry that will lead to more choices and improve cost-effectiveness for consumers.

C. Eligibility Of Services To Residential Areas Of Schools Should Be Approved.

The FCC seeks comment on whether to permit schools that serve unique populations to provide E-rate supported services to residential facilities. The U.S. Department of Education’s draft National Technology Plan supports always on learning. The executive summary states “Our model of an infrastructure for learning is always on, available to students, educators, and administrators regardless of their location or the time of day. It supports not just access to information, but access to people and participation in online learning communities. It offers a platform on which

²⁴ National Broadband Plan, Recommendation Number 11.17 at p. 237 which states, “The FCC should give schools and libraries more flexibility to purchase the lowest-cost broadband solutions.” This recommendation explicitly states that the current ineligibility of dark fiber “prevents applicants from pursuing lower-cost mixed lease/own strategies for broadband infrastructure.

developers can build and tailor applications.” This model is being adopted by schools and libraries across the country.

SECA supports the expansion of the scope of educational purposes which states “that in certain limited instances, the use of telecommunications services offsite would be considered integral, immediate, and proximate to the education of students or the provision of library services to library patrons, and thus, would be considered to be an educational purpose” for this purpose.²⁵

SECA recommends that *any* school that has a dormitory or residential facility meets the FCC definition of a school and provides educational services to Pre-K – 12 students should be allowed to include services provided to the dormitory on E-rate applications without penalty, regardless of whether the school is state-operated or administered by another entity. Institutions that provide these services often exist outside the scope of state government yet their mission is no less important. SECA does not believe there will be any noticeable impact to demand.

D. Web Hosting Should Be Eliminated From the List of Eligible Services.

SECA agrees with the elimination of Web Hosting as an eligible service, as proposed in the ESL FNPRM²⁶ and the FY 2011 ESL. This particular type of service has lent itself to an ever widening definition of web hosting by service providers, creating undue demand on the program for a type of service that is creeping farther and farther away from actual student instruction. Directing the focus away from applications in order to maintain the networks and infrastructure capable of delivering a broader choice of applications makes more sense today.

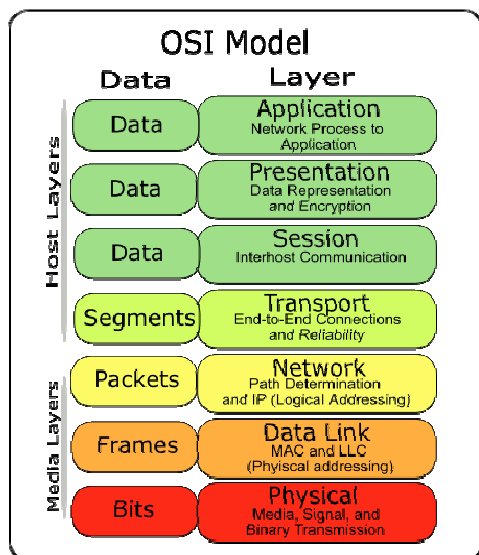
²⁵ E-rate Broadband NPRM, ¶ 55.

²⁶ ESL NPRM, ¶ 37.

SECA has described its concerns about web hosting in great detail in its reply comments to the FY 2010 Draft ESL filed on June 23, 2009 in CC Docket NO. 02-6 which it hereby incorporates by reference²⁷ rather than repeating the same concerns here.

E. The Framework For Evaluating And Determining Eligibility Of Priority Two Equipment Should Adopt The OSI Model.

In order to meet the spirit of the program's goal of providing broadband and connectivity for schools and online resources (*i.e.*, the Internet), SECA recognizes that the spirit of this E-rate Broadband NPRM is to assure adequate funding for priority one services. In order to accomplish this, priority two needs to be streamlined and focus only on items essential for voice and data transport (focusing on layers 1-4 of the OSI model).²⁸ These elements are critical to network transfer of data (student / teacher access to online resources). Therefore, SECA respectfully submits the following recommendation as guidelines for determining priority two eligibility.



²⁷ <http://fjallfoss.fcc.gov/ecfs/document/view?id=7019807927>

²⁸ (<http://homeearthlink.net/~tt4titans/sitebuilderspictures/osi-model.jpg>)

In the OSI model all layers overlap in order to communicate to the next layer. Level 4 becomes the crossover or data demarcation point where eligibility may be determined. As the diagram illustrates, the upper three layers are labeled “Data” referring to the point at which the user begins to interface with the application.

Using this approach streamlines the ESL and designates as eligible only those items that are truly essential for transporting information to classrooms and libraries. By limiting the scope of eligible priority two services and equipment, more funding will be freed up to be made available to lower discount applicants that have traditionally been unable to access to priority two funding due to the limited E-rate funding resources.

F. Using the OSI Model, SECA Makes The Following Priority Two Eligibility Recommendations Concerning The FY 2011 Draft ESL.

1. Firewalls and VPN are eligible based on the level at which they communicate to the internal and external networks (packet level communication, no user interface). These are neither end user devices nor application driven.

2. Servers and storage devices are places where users interface with applications and communicate with information. The vehicle for storing content and/or applications such as servers and storage devices should not be eligible.

3. Video Codecs would not be eligible using the OSI determination criteria because this device functions in the presentation layer which provides a variety of coding and conversation functions that are applied to application layer data.

4. When a device does mostly layer 1-4 functions, it should be eligible for P-2 consideration. When a device’s functionality is limited primarily to a specific application or use of

an application, then it should no longer be considered eligible for priority two support. Examples include:

- Servers
- All software
- Storage devices
- Video components

5. GPS is an application that uses broadband data connectivity and should be ineligible. GPS service or hardware is not essential to the data communications across the network. If a cell phone or other tethering device is needed to make use of an information service, the underlying telecommunications service may remain eligible, but GPS would be a separate ineligible cost to the end user.

6. Cabling/connectors: These elements are physical layers in the OSI model and would be eligible if they occur in the telecommunication closet or if used to connect desktop or end user equipment.

7. Circuit cards / components: These elements operate at the data link layer in the OSI model and would be eligible if used for network connectivity. However, these items if used within a desktop or end user equipment would not be eligible.

VIII. Increased Access To Priority Two Funding

A. Introduction.

In order to expand access to broadband in the classroom, the E-rate Broadband NPRM proposes methods to ensure that more schools and libraries receive priority two funding for internal connections such as switches, routers and internal cabling. The FCC offers two goals: *(1) providing funding for internal connections to more schools and libraries than in the past; and (2) ensuring a predictable amount of funding available to schools and libraries for internal connections*

*each year.*²⁹ The FCC proposes several methods to address priority two. One option would be to allocate funding for internal connections based on a per student cap per school district, to which the applicant's discount rate would be applied. To ensure that a predictable amount of funding is available for internal connections, a defined amount of funding could be reserved for priority two funding. The E-rate Broadband NPRM asserts that the 2-in-5 rule has not had the desired impact and other strategies should be considered to ensure more applicants receive priority two funds.

SECA agrees with the above two goals of the FCC with regard to internal connections. More schools and libraries are in need of priority two funds. Providing predictable priority two funding for all applicants is a worthy goal. Except in the second year of the program (1999), demand for priority two funding has outpaced available funds. Current demand figures for priority two are conservative since applicants with relatively low NSLP-eligible students often do not even bother to apply for the funds. While extremely high discount schools (90% discount band) may consider priority two funding to be “predictable,” priority two funding is not predictable for the vast majority of applicants (unless it is considered that most applicants can safely predict that they will not receive any priority two funding).

While SECA concurs with the FCC goals, SECA does not favor a capped per student allocation for priority two in order to ensure more applicants receive priority two funding. Neither does SECA support a minimum amount to be allocated per building for either schools or libraries. Per student caps and minimum allocations per building do not effectively account for the likely disparity between small and/or rural applicants that would result from the funding of very large applicants. A per student allocation would unfairly advantage larger applicants over smaller ones and likely not resolve perpetual funding of some applicants at the expense of other equally deserving or needy applicants.

²⁹ E-rate Broadband NPRM, ¶ 68 (emphasis added).

SECA concurs that 2 in 5 has not worked to provide funding to more schools and libraries. The same schools continue to receive repeated funding while those schools and libraries that are also very poor do not receive funding. 2 in 5 has effectively made it impossible for state consortia or state networks to purchase priority two equipment for shared use by members. Elimination of 2 in 5 and implementation of the rotating bands concept as explained below would make it possible for state networks to leverage their buying power and implement network systems and management principles more appropriately for individual members or the various other sectors that may be served by or make use of state networks.

SECA does not favor a set-aside of priority two funding each year. SECA encourages the FCC to determine the impact of removing priority one services such as webhosting before adopting a rule to set aside funding specifically for priority two purposes.

SECA also concurs that funding internal connections at a district level is a more thoughtful way to proceed, rather than the current building-centric piecemeal funding method. While individual 90% discount schools have consistently benefited from the current method of funding at the individual building level, district-wide internal networks have not generally received funding.

B. A Two-Pronged Approach That Provides Greater Assurance That All Applicants Will Periodically Be Able To Successfully Apply For Priority Two Funding Is Needed.

In order to meet the goals of providing more applicants with internal connections funding and ensuring a predictable amount of funding for applicants, SECA recommends a two-pronged approach: (1). Utilize a priority two funding “formula;” (2). Establish a process of funding “down” the discount levels until all applicants and discount levels are funded.

(1) Priority Two Discount Determination.

SECA recommends replacing the discount matrix for priority two only with a priority two funding formula. SECA has previously and consistently filed comments recommending that a

revised discount matrix be adopted for priority two goods and services. Rather than utilize the current discount matrix for priority two, SECA recommends use of a funding formula allocation with two important features. First, the proposal limits the maximum discount to 70%, thereby requiring an applicant to contribute more of the applicant's own funds. SECA asserts that requiring more "skin in the game" will help curb waste, fraud and abuse. Second, SECA recommends the establishment of a funding "formula" for priority two. In this proposal, the applicant (district, library, non-public or charter school) relies upon the percentage of NSLP-eligible students to directly calculate the priority two discount. As can be seen below, the discount for an urban applicant is determined by adding a constant 20% to the percent of NSLP-eligible students, with a maximum E-rate discount of 70%.

For example, an urban applicant with 18% of students eligible for NSLP will receive a discount of 38% (18% NSLP eligible + 20% urban constant= 38% E-rate priority two discount). The discount for a rural applicant is determined by adding a constant 25% to the percent of NSLP-eligible students, with a maximum E-rate discount of 70%. For example, a rural district with 27% of students eligible for NSLP will receive a discount of 52% (27% NSLP eligible+25% rural constant=52% E-rate priority two discount).

NSLP %	URBAN DISCOUNT	RURAL DISCOUNT
	(NSLP% + 20%; maximum 70%)	(NSLP% + 25%; maximum 70%)
100%	70%	70%
99%	70%	70%
98%	70%	70%
∫		
49%	69%	70%
48%	68%	70%
∫		
44%	64%	69%
43%	63%	68%
42%	62%	67%
34%	54%	59%
33%	53%	58%
32%	52%	57%
∫		
24%	44%	49%
23%	43%	48%
22%	42%	47%
∫		
14%	34%	39%
13%	33%	38%
12%	32%	37%
∫		
0%	20%	25%

An alternative to the formulaic discount matrix that may also achieve greater distribution of priority two funds is a simple more granular matrix that eliminates the rural/urban distinction and also limits discounts to 70%.

NSLP	P2 E-rate Discount %
<1-19%	10%
20%-29%	20%
30%-39%	30%
40%-49 %	40%
50%-59%	50%
60%-69%	60%
70%-100%	70%

(2) All Applicants Should Be Scheduled On A Rotating Basis To Apply For Priority Two Funding.

Further, in either case described above, to ensure a more predictable amount of priority two funding, SECA recommends that the FCC establish a process of funding “down” the discount levels until all applicants and discount levels are funded. While this process may take several years until all applicants and discount levels are funded, it will ensure more predictability for all applicants and not just for extremely high discount applicants. For example, in the first year of implementation, applicants with NSLP eligible percentages of 100% are funded first, 99% are funded second, and so forth until all available priority two funds are committed in year 1. In year 2, the next lower NSLP eligible percentages are funded, so that if year 1 funding stops at 92% NSLP eligible, then year 2 will start funding at the 91% NSLP eligible and proceeding down the NSLP levels until all available priority 2 funds are expended.

Possible funding allocation:

NSLP	Urban %	Rural %
100%	70%	70%
99%	70%	70%
98%	70%	70%
97%	70%	70%
96%	70%	70%
95%	70%	70%
94%	70%	70%
93%	70%	70%
92%	70%	70%
91%	70%	70%
90%	70%	70%

Key: blue=year 1 funding availability

Pink=year 2 funding availability

SECA recognizes that NSLP discounts do not remain stagnant from one year to the next. Depending upon whether the NSLP discount increases or decreases, the re-ordering of applicants

will be a reality. But once an applicant is funded in the priority two cycle, the applicant cannot receive priority two funding until all other applicants receive funding.

In order to effectively budget and plan, applicants will be allowed two years to purchase and install priority two equipment.³⁰ With use of the already-established service delivery deadline extension process, an applicant may request additional time beyond two years to complete the installations of priority two equipment.

Under this approach, consortia applicants will have two options for filing for priority two services and equipment depending on whether the procurement is for shared equipment that will be used by all consortium members, or whether the equipment will be installed at the premises of a consortium member for that member's use.

A consortium member such as a school district may file for some priority two equipment as an individual district while also being part of a consortium application for different priority two equipment that will be installed and used by the individual consortium member. In order to avoid applicants from double dipping from priority two funds (applying as a district and also being a member of a consortium application for the same eligible equipment), PIA will need to confirm that the eligible equipment being requested by the consortium is not the same as equipment being purchased by the individual districts. This is the same situation that currently exists whenever a consortium member files a separate priority two application and the consortium of which the member is a part also files a priority two application.

For the equipment that the consortium lead is procuring on behalf of the consortium member and that will be installed at the premises of the consortium member, the consortium lead will complete a consortium Block 4 worksheet for all members with the same discount rate. The

³⁰ The use of the phrase "equipment" is intended to cover all priority two funding requests except for basic maintenance of internal connections.

Administrator will verify that there is no duplication of service between the consortium application and member application. For example, if the projected priority two discount eligibility for a given year will be applicants between 70% and 65%, the consortium lead will complete a priority two form 471 and complete a Block 4 worksheet for each group of members at each of the projected eligible funding bands. The consortium lead will also complete a Block 5 funding request worksheet for the equipment to be installed at each member location within the bands. Each Block 5 will reference the corresponding Block 4 worksheet, similar to current policy.

Consortium leads may also file for priority two funding for equipment that will be shared and used by all members of the consortium. These applications must utilize the simple average of all of the consortium members' simple average discounts, and must be filed in the year in which the consortium's average discount is eligible for priority two funding. The consortium's Block 4 worksheet will include the simple average discount of each consortium member.

Just to be altogether clear, SECA's recommendations for modifying the discount levels for priority two funding would not apply to priority one funding. The current discount matrix would continue to apply for priority one. The current priority one matrix allows applicants a predictable funding allocation and avoids potential applicant "shock" that could result from drastic changes to funding for services that may be covered by multi-year contracts and upon which a majority of schools and libraries currently depend.

The revised Block 4 for the form 471 application that reflects the revised priority two funding, as well as incorporates the proposed revisions in Section IV.B. is:

Entity Number _____	Applicant's Form Identifier _____
Contact Phone _____	Name _____

Block 4 Discount Worksheet

The Block 4 Worksheet is used to calculate your discount for services. Individual schools, school districts, and libraries within a single school district will file one line on this worksheet. Consortia and libraries servicing more than one school district will list each school district and calculate the simple average of all districts. Please refer to the instructions for information specific to the type of application you indicated in Block 1, Item 5 and type of application (P1 or P2) indicated on Block 1. Consortia applicants applying for P2 funding may complete multiple Block 4 worksheets for all recipients of service at a given discount rate.

1	2	2a (Libraries Only)	3	4	5	6	7	8	9
Name of Entity	Administrative BEN	Administrative BEN for Associated School District	Urban Rural	Total Number of Students	Number of Students Eligible for NSLP	Percent of Students Eligible (Col 5/Col 4)	Priority One Discount	Priority Two Discount	Shared Discount
Discount Calculations									
Schools, School Districts, and Single-District Libraries									
Multi-District Libraries and Consortia: Calculate the total of Column 7 and divide by the number of member Entities in Column 1.									

C. Basic Maintenance of Internal Connections Should Be Eliminated From Eligibility.

As one option for expanding access to priority two funds to more applicants, the FCC proposes modifications to the basic maintenance of internal connections funding including potential elimination of this service altogether or capping of funding and reimbursement of requests based on actual costs incurred.³¹

In the Third Report and Order and Second Further Notice of Proposed Rulemaking in CC Docket No. 02-6 (FCC 03-323)(rel. December 23, 2003), ¶¶ 20-24, the FCC previously attempted to clarify and limit the definition of eligible basic maintenance of internal connections, in part, to address allegations of waste, fraud and abuse. This change took effect on March 11, 2004 (Federal

³¹ E-rate Broadband NPRM, ¶¶ 80-83.

Register, Volume 69, No. 27 (February 10, 2004) at p. 6181) so the impact of the rule change would have first been felt in E-rate Funding Year 2005 (services delivered July 1, 2005 through June 30, 2006).

Review of the funding demand for basic maintenance of internal connections for FY 2005 through FY 2010 shows that, on average, 7% or \$269 Million of total demand is attributed to this category.

Funding Year	\$ Basic Maintenance	% Basic Maintenance of Total Demand
2005	\$240 M	6.6%
2006	\$262.3 M	7.4%
2007	\$259.5 M	7.0%
2008	\$271.6 M	6.3%
2009	\$316.2 M	7.9%
2010	\$262.8 M	6.7%
Average	\$268.73 M	6.98%

Prior to FY 2005, data on basic maintenance of internal connections demand is not publicly available so it is impossible to compare whether demand decreased following the implementation of the new rules. Since FY 2005, the first year of the new rules, demand jumped by \$22 million and has consistently stayed at this higher demand level. This information demonstrates that demand for internal connections funding has not declined since the new rules have been implemented and any concerns about any potential waste, fraud and abuse have not been ameliorated.

At the same time, the combined demand for priority one services and priority two internal connections has grown and in the past three years has hovered at \$4 billion.

The upward pressure on the fund, combined with concerns about allocation of scarce resources, leads SECA to recommend that the entire category of basic maintenance of internal connections be altogether eliminated. While this service is integral to the use of other E-rate funded equipment and services, applicants will need to seek other funding sources for this

component of their technology budgets. SECA makes this recommendation after carefully considering the FCC's other options for curtailing maintenance funding but rejecting those options as being extremely complex to administer, contributing to higher program administrative costs and causing confusion among applicants and service providers.

SECA's members routinely hear the frustrations expressed by applicants that historically have been unable to access priority two funding for internal connections because their discount level is not high enough. This paramount concern along with principles of equity and fairness compel SECA to conclude that measures must be taken to assure that the limited E-rate priority two internal connections resources be made available to as many applicants as possible. Elimination of basic maintenance of internal connections will make on average an additional \$268 million available for funding of internal connections, all other things being equal.

The FCC should clarify that consistent with current USAC policies, a manufacturer's warranty of no more than three years, unless the standard warranty period prior to adoption of this rule was longer, that is bundled with the price of eligible equipment should continue to be eligible as part of priority two internal connections equipment. Warranties, unlike many maintenance contracts, offer break/fix options in a far more cost effective manner than labor-intensive basic maintenance agreements.

D. Basic Phone Services Should Continue to Be Eligible.

The FCC seeks comments on whether a higher priority should be given to advanced telecommunications and broadband services rather than voice telecommunications services. In addition, the FCC seeks comments on whether voice telephone service should be eliminated as an

eligible service due to the fact that schools and libraries were paying in full for these services prior to the inception of E-rate.³²

SECA understands that one of the goals of the E-rate program is to increase broadband services to areas with limited or no broadband access. In recent years, broadband services have increased throughout the country with the assistance of E-rate funding. However, SECA is concerned that there are still many applicants with few broadband alternatives. Elimination of voice services as an eligible E-rate service would essentially disfranchise some applicants for whom basic telephone service discounts are the only category for which they request E-rate funds.

There are costs of transition to a new phone system (phones, equipment, local networking) even if it is more cost-effective over the long run, and most school districts don't have the funds available to fund those extra costs in a time of severe budget cuts.

The FCC should not change E-rate rules to try to force schools and libraries to forego basic phone service discounts in areas where broadband services are not available or to make cost-ineffective choices where they are. Rather, it should encourage and support carriers to build out their broadband networks particularly in rural areas, and to provide affordable and quality broadband services to schools and libraries. When those are in place, we believe schools and libraries will transition to them. In the meantime, subsidies for basic phone service help schools and libraries pay the undiscounted portion of the costs of advances services.

IX. Indexing the E-rate Funding Cap to Inflation Should Be Adopted.

SECA agrees that the cap must be adjusted upwards to limit the ever widening gap between requests and disbursements. Annual demand has consistently exceeded the cap by a factor of 2, or nearly so. The suggested inflation adjustment should be implemented for funding year 2011. The

³² E-rate Broadband NPRM, ¶¶ 58-59.

additional proposals and recommendations made during this comment period are expected to alleviate some of the demand pressure, e.g. eliminating Basic Maintenance and Web Hosting. Additional relief may be realized as a result from the applicant's ability to lease fiber from any provider as well, leading to increased cost-effectiveness for all broadband services.

X. Disposal of Equipment

The FCC proposes to allow schools and libraries to dispose of equipment for payment or other consideration under the following conditions: (1) the equipment has exhausted its useful life, but no sooner than five years after the equipment is installed; (2) the equipment is formally declared to be surplus by the school board, information technology officer, or other authorized body or individual; (3) the school or library notifies USAC within 90 days of disposal and keeps a record of the disposal for a period of five years following the disposal; and (4) the disposal process fully complies with state and local laws, where applicable.³³ The FCC proposes to revise the form 500 to serve as a notification to USAC of the disposal.

SECA concurs with the FCC's basic proposal to permit the disposal of obsolete equipment whether or not such disposal involves payment or other consideration. SECA agrees with the FCC's proposed condition to incorporate a five year minimum in the determination that the equipment has exhausted its useful life.

Arguably, but not explicitly, the FCC's existing equipment transfer rules already permit the disposal of obsolete equipment if such disposal involves no payment or other consideration of value. The proposed rules would clarify this position.

³³ E-rate Broadband NPRM, ¶ 90.

More broadly, the proposed rules would permit the disposal of equipment for payment or other consideration. This is an important addition because: (1) some obsolete and/or excess equipment may have a tangible salvage value; and (2) state and local rules may require schools and libraries to seek compensation, if available. SECA agrees with the FCC's position to reject a position included in E-rate Central's 2006 petition requiring a return of the discounted portion of any salvage value to USAC.

SECA believes that neither the FCC nor USAC should have any interest in equipment that has been installed for at least a five year period. Such equipment, when disposed of, should be reflected in the applicant's inventory records as required by state or local rules, but there should be no federal requirement to notify USAC or retain disposal records.

SECA notes that many applicants have been warehousing obsolete equipment pending the clarification of FCC disposal rules. A requirement to notify USAC of the disposal of the backlog of this equipment, including FRN details would be both burdensome to applicants and overwhelming to USAC.

SECA asks the FCC to clarify that its language in Para. 91, permitting the sale or "trade in" of equipment that has exhausted its useful life, is not meant to supersede nor eliminate the existing guideline for the trade in of equipment that has been installed for less than five years.

XI. Conclusion

The State E-rate Coordinators Alliance respectfully requests the Commission to adopt an Order that accepts and approves the recommendations contained herein.

Respectfully submitted,

/s/ Gary Rawson
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